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U.S. DIST. COURT
WEST. DIST. OF
KANSAS CITY, MO

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MATT FURIE,

)

Plaintiff,

)

v.

)

JESSICA LOGSDON

)

Defendant.

)

Case No. 17-cv-00828-HFS

ANSWER

1. Declaratory Relief

2. Fees and Costs (17 USC § 505)

JURY TRIAL DEMANDED

ANSWER TO COMPLAINT

Defendant Jessica Michelle Logsdon, fine artist and Resident of Missouri, representing herself *pro se*, hereby answers the complaint as follows:

ANSWER TO NATURE OF ACTION

- 1) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 1, and on that basis denies the averments.
- 2) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 2, and on that basis denies the averments. By way of further answer, Matt Furie has denied in a VICE interview that he created the “brown lipped, blue shirt” Pepe. “[H]e’s got, randomly, a blue shirt and brown lips, and that’s his accepted outfit now. [This is one of] the two things that kind of piss me off about it. Other than that, I don’t really care.”¹
- 3) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant admits that a green frog-like character was and is a popular internet meme, as meme is defined by Webster’s Dictionary to be “an idea, behavior, style, or usage that spreads from person to person within a culture.”²
- 4) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant denies that Plaintiff has “worked hard to counteract negative images of Pepe.” For example, in August of 2010 Matt Furie stated in an interview with Know Your Meme, “So I got my image that I drew but then somebody took that out and vectorized it and made it something kinda different than mine.

¹ See, e.g., Sean T. Collins, The Creator of Pepe the Frog Talks About Making Comics in the Post-Meme World, https://motherboard.vice.com/en_us/article/xwgpkq/pepe-copyright-lawsuit-matt-furie-jessica-logsdon

² See <https://www.merriam-webster.com/dictionary/meme>

My original line drawing, and I was like it doesn't look the greatest but I don't care." In the same interview he went further, noting, "I think [Pepe] just kinda took a life of its own. I do think it's kind of an interesting phenomenon that that out of anything else in the comic took off. Seems kinda random but I'm happy that it has." ³

Quoting from an interview in NYMAG:

I [Abraham Riesman, journalist] ask how it felt when Perry and Minaj posted Pepe memes and all he says is, "I don't care." I bring up last year's bizarre "Rare Pepe" craze, in which 4chan users semi-seriously attempted to counteract mainstream appropriation of Pepe by flooding the board with unique versions of him; he muses, "I just sit back, relax and let the Pepes fall where they land, my friend!" Only around 2010 did he find out that Pepe was "making some big waves of the web waves," as he puts it. His memories of finding out about the memes are hazy, but he recalls being excited by some of the stuff he saw: "Someone even made a 'feels good man' song/YouTube music video that even my dad was impressed with!" he says. "Hi Dad!!" These days, it's still hard to tell how [Furie] feels about what's happened to his most famous character. "I've realized that Pepe is beyond my control," he says. "He's like a kid, he grew up and now I have to set him free to live his life. It's all good." Furie goes on to state, "I love to Google my own name. I'm much more concerned about 'Matt Furie.' I'll never be as popular as the frog, but I'm alive: something he can never be." ⁴

Regarding Pepe's widespread use as a meme, Furie stated to VICE Magazine in July of 2015:

"I don't really see it as being something that's negative. It's this almost post-capitalist kind of success. I'm not making any money off of it, but it's become its own thing in internet culture. Now, at least, a lot of people make a conscious effort to go out and try and create that kind of meme success, where you're doing these little one-off characters, little gags, little gifs, and that's definitely your

³ See: https://www.vice.com/en_ca/article/avy3aj/feels-good-man-72

⁴ See, <http://nymag.com/selectall/2016/09/pepe-the-frogs-creator-matt-furie-discusses-trump-memes.html>

intention. I'm just flattered by it. I don't really care. I think it's cool. In fact, I'm getting kind of inspired by all the weird interpretations of it. I wanna use it to my own advantage and try to come up with comics based on other people's interpretations of it. He also states that he did not create the blue shirt brown lipped Pepe. "Two, he's got, randomly, a blue shirt and brown lips, and that's his accepted outfit now. Those are the two things that kind of piss me off about it. Other than that, I don't really care." "It's like a decentralized folk art, with people taking it, doing their own thing with it, and then capitalizing on it using bumper stickers or t-shirts. That's happening to me too. There is a tradition of it." Further, he indicates that he owns bootleg material and regularly appropriates well-known copyrighted images. "No, because I do art outside of *Boy's Club*, and I reference Terminator or Ronald McDonald or other pop-cultural stuff that I didn't come up with. If I see someone selling something on Etsy, like a Pepe pin or something, I just ask them to send me some. I have a little collection of bootleg Pepe stuff, some t-shirts and a necklace and an earring and some pins and things like that."⁵

These are but a few of the many public-facing statements Matt Furie has made regarding the use of Pepe as a meme.

- 5) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant denies that she has copied Plaintiff's work. Defendant denies that she has "freeloaded off Pepe's popularity." Defendant denies that she promotes violence and hate.
- 6) Defendant denies that her works are copies of Matt Furie's work.
- 7) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant denies that the cited works are copies of Matt Furie's work.
- 8) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant denies that the cited works are copies of Matt Furie's work.

⁵ See: https://www.vice.com/en_ca/article/avy3aj/feels-good-man-728

9) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, On September 15, 2017 WilmerHale attorney Louis Tompros signed and sent a letter to the Defendant claiming she promotes “alt-right messages across various forms of media” and that her “use of Pepe the Frog in connection with [her] promotion of violence and hate is unauthorized and unacceptable.” The letter goes on to demand that Defendant “provide us with documentation for sales of all prior paintings or other goods that you have sold that include the character and image of Pepe the Frog, including the dates and amounts of each sale, and your profits from each work.” He ends the letter by stating that “if we do not receive confirmation that you have complied in full with this request, we reserve the right to bring an action against you to permanently enjoin you from using Pepe the Frog, to obtain statutory damages, actual damages, unlawful profits, and attorney's fees and costs, and to see all other remedies available under applicable Federal and state laws.” (See: Attachment A). Defendant denies that her works are infringing. Defendant notes that Plaintiff was not able to present a registered copyright to Defendant at the time this letter was received.

10) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant denies that she has willfully or knowingly copied Matt Furie's work.

ANSWER TO PARTIES

11) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 11, and on that basis denies the averments.

12) Defendant denies posting on 4-chan. Defendant agrees with remaining averments.

ANSWER TO JURISDICTION AND VENUE

13) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 13, and on that basis denies the averments.

14) This paragraph contains **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. However, answering Defendant does not dispute that this Court has jurisdiction over the claims presented..

15) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 15, and on that basis denies the averments.

16) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 16, and on that basis denies the averments.

ANSWER TO FACTS

ANSWER TO FURIE'S CREATION OF PEPE THE FROG

- 17) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 17, and on that basis denies the averments.
- 18) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 18, and on that basis denies the averments.
- 19) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 19, and on that basis denies the averments.
- 20) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 20, and on that basis denies the averments.
- 21) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 21, and on that basis denies the averments.
- 22) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 22, and on that basis denies the averments.
- 23) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 23, and on that basis denies the averments.
- 24) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 24, and on that basis denies the averments.
- 25) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 25, and on that basis denies the averments.
- 26) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 26, and on that basis denies the averments.
- 27) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 27, and on that basis denies the averments.
- 28) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 28, and on that basis denies the averments.
- 29) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 29, and on that basis denies the averments.
- 30) Defendant agrees that Pepe the Frog is a popular meme, as meme is defined by Webster's Dictionary to be "an idea, behavior, style, or usage that spreads from person to person within a culture."
- 31) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph;

therefore, they are denied. By way of further answer, Defendant admits that Katy Perry shared an alt-right Pepe meme with approximately 100,000,000 Twitter followers and that Nicki Minaj shared a sexist Pepe meme with approximately 21,000,000 Instagram followers.

32) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant admits that by May 2015 “Pepe” was a widely-recognized idea.

ANSWER TO FRINGE “ALT RIGHT, NEO-NAZIS, AND WHITE SUPREMacists
“RECLAIM” PEPE

33) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant admits that Pepe was and is “mainstream” as it is defined by Merriam-Webster to mean “a prevailing current or direction of activity or influence.”⁶

34) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 34, and on that basis denies the averments.

35) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant admits that Donald Trump Jr. shared an image of a frog-like creature on Instagram.

36) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant admits that Hillary Clinton and her campaign website sought to inform the public that an idea called “Pepe” was associated with a political movement known as the “alt-right.”⁷ Defendant admits that Pepe meme images were predominately displayed and then verbally linked to the “alt-right” in many national and international news outlets following Hillary Clinton's speech and her web-delivered “explainer” article^{8, 9, 10} and that the meme was shared by the Russian Embassy in London.¹¹

37) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 37, and on that basis denies the averments.

⁶ See: Merriam-Webster, Mainstream”, <https://www.merriam-webster.com/dictionary/mainstream>

⁷ See: Andrew Couts, “Daily Dot” <https://www.dailyydot.com/layer8/clinton-pepe-white-supremacy-explainer/>

⁸ See: Rachel Maddow, MSNBC, <https://www.youtube.com/watch?v=okoAQCoMYx8>

⁹ See: CNN News Video, <https://www.youtube.com/watch?v=kdwlf042aMQ>

¹⁰ See: Don Lemon, CNN (mirror), <https://www.youtube.com/watch?v=fmISfZRiADY>

¹¹ See: BBC News, “Russian Embassy Tweets Pepe”; <http://www.bbc.com/news/blogs-trending-38563501>

38) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 38, and on that basis denies the averments.

ANSWER TO FURIE'S EFFORTS TO DISSOCIATE PEPE FROM HATEFUL CAUSES

39) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 39, and on that basis denies the averments. By way of further answer we incorporate our previous answer to Paragraph 4.

40) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 40, and on that basis denies the averments.

ANSWER TO JESSICA LOGSDON'S IMAGES

41) Defendant admits that she is a political artist. Defendant denies all remaining averments.

42) Defendant admits that she sells oil paintings on her website and on ebay. Defendant denies that she offers or sells copies of Matt Furie's works.

43) Defendant denies that her images are copies of Matt Furie's work. Defendant admits that some of her works contain "Pepe" in the title. Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 40, and on that basis denies the averments.

44) Defendant admits that she created a political poster titled "Drain the Swamp." Defendant denies that she held an art show. Defendant denies selling infringing images. Defendant admits that she has listed paintings on her website for \$500, but denies having sold any at that price point.

45) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant denies that she posted on 4chan. Defendant admits that Hillary Clinton shared a meme presenting Donald Trump as a green frog with golden hair standing behind a Presidential Podium. Defendant admits that she created oil paintings informed by the ideas presented by Hillary Clinton and her campaign.

46) Defendant lacks sufficient information or knowledge to affirm the allegations in this paragraph; therefore, they are denied. By way of further answer, Defendant admits that her Twitter account has never been suspended.

47) Defendant admits that she created a political oil painting titled "Miley" that was informed by a meme Nicki Minaj created and shared with approximately 21,000,000 people on Instagram.

48) Defendant denies all averments in paragraph 48.

ANSWER TO FURIE'S CEASE AND DESIST REQUEST

49) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 49, and on that basis denies the averments. By way of further answer, Defendant received a Cease and Desist letter and also responded to a DMCA takedown notification received from Square, Inc.

50) Defendant denies these averments.

51) Defendant admits she mailed a painting to Louis Tompros of WilmerHale. Matt Furie's lawyers indicated in their Cease and Desist letter that they felt this was an "unauthorized" image of Pepe. The painting features a frog-like Donald Trump holding an American Flag with the text "Shh," "No Tears," and "Only Memes Now." Defendants response offered Matt Furie's legal representatives an opportunity to critically review Fair Use prior to initiating litigation.

52) Defendant denies that her work is infringing. Defendant maintains a good faith belief that her images were wrongly removed under the DMCA. Defendant does not have sufficient information or knowledge to either admit or deny the remaining averments in paragraph 52, and on that basis denies the averments.

ANSWER TO COUNT I

53) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 53, and on that basis denies the averments.

54) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 54, and on that basis denies the averments. By way of further answer, Defendant notes that Matt Furie does not have a registered copyright in Pepe.

55) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 55, and on that basis denies the averments.

56) Defendant denies these averments.

57) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 57, and on that basis denies the averments.

58) Defendant denies these averments.

59) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 59, and on that basis denies the averments.

60) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 60, and on that basis denies the averments.

61) Defendant does not have sufficient information or knowledge to either admit or deny the averments in paragraph 61, and on that basis denies the averments.

ANSWER TO REQUEST FOR RELIEF

- 1) Defendant denies that Plaintiff is entitled to any relief, including any request for a permanent injunction as set forth in Paragraph 1 of their request for relief.
- 2) Defendant denies that Plaintiff is entitled to any monetary damages as claimed in Paragraph 2 of their request for relief.
- 3) Defendant denies that Plaintiff is entitled to any relief as claimed in Paragraph 3 of their request for relief.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

(Failure to State a Claim)

- 1) Plaintiff fails to state a claim upon which relief can be granted.

SECOND DEFENSE

(First Amendment)

- 2) Any purported use by Defendant is an exercise of free speech and constitutionally protected by the First Amendment of the United States.

THIRD DEFENSE

(Fair Use Copyright)

- 3) Any use by Defendant of Plaintiff's copyrighted work, if any is found to exist, is fair use under 17 U. S. C. § 107.

FOURTH DEFENSE

(Innocent Intent)

- 4) Assuming only for the sake of this defense that any infringement can be proven, Defendant was not aware and/or did not have reason to believe that her acts constituted an infringement of copyright.

FIFTH DEFENSE

(De Minimus)

- 5) The alleged use by Defendant, if any, is de minimus.

SIXTH DEFENSE

(Estoppel and Waiver)

6) Plaintiffs' claim is barred by the doctrines of equitable estoppel and waiver.

SEVENTH DEFENSE

(Laches)

7) Plaintiffs' claim is barred by laches.

EIGHTH DEFENSE

(Copyright Registration)

8) Plaintiff has failed to register the copyrights in one or more of the images set forth in their Complaint and thus are not permitted to file this suit or maintain this action. The Supreme Court clarifies in PETRELLA v. METRO-GOLDWYN-MAYER, INC. “[a]lthough registration is ‘permissive,’ both the certificate and the original work must be on file with the Copyright Office before a copyright owner can sue for infringement.”

NINTH DEFENSE

(Ideas Cannot be Copyrighted)

9) Plaintiffs' claims are barred since critical parts or portions of their alleged protected copyrights are invalid due to consisting of non-protectable idea(s).

TENTH DEFENSE

(Statutory Damages and Attorney's Fees)

10) Plaintiff is barred by 17 U.S.C. Section 412 from claiming statutory damages or attorney's fees under the Copyright Act in that any alleged acts of infringement occurred before first registration of the Plaintiff's alleged work.

ELEVENTH DEFENSE

(Doctrine of Merger)

11) Plaintiffs' claims, including their assertion of copyright protection, are barred by the doctrine of Merger.

TWELFTH DEFENSE

(Scenes-a-faire)

12) This action is barred by the stock “scenes-a-faire” doctrine.

THIRTEENTH DEFENSE

(Deception)

13) Plaintiffs' claims are barred due to his deceptive and misleading public statements in connection with all alleged copyrighted works.

FOURTEENTH DEFENSE

(Unclean Hands)

14) Plaintiffs' claims are barred or abated substantially by the doctrine of unclean hands.

FIFTEENTH DEFENSE

(No Damages)

15) Plaintiffs' claims fail in whole or in part to the extent they have suffered no damages.

SIXTEENTH DEFENSE

(Copyright Misuse)

16) Plaintiff has engaged in one or more acts that have *misused* their copyright including but not limited to having wrongfully attempted to extend the scope of the limited monopoly granted by the Copyright Act.

RESERVATION OF RIGHT TO ALLEGE OTHER AFFIRMATIVE DEFENSES

17) Defendant reserves the right to assert any additional defenses that are supported by information or facts obtained through discovery or other means during this case and expressly reserve the right to amend the **Answer** to assert such additional affirmative defenses in the future.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays this Honorable Court for the following relief:

- 1) For dismissal of Plaintiffs' action with prejudice;
- 2) For an order that Plaintiff shall take no relief from their complaint herein;
- 3) For an award of Defendant's costs and fees herein incurred, if any; and
- 4) For such further and other relief as the Court deems fair and just.

Dated: 10/20/17

BY: Jessica Logsdon
Jessica Logsdon, Defendant, Pro Se

DEMAND FOR A JURY TRIAL

Defendant demands trial by jury.

Dated: 10/20/17

BY: Jessica Logsdon
Jessica Logsdon, Defendant, Pro Se

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing was sent via the Court's electronic filing system to all counsel of record this 20th day of October, 2017

Jessica Logsdon
Jessica Logsdon